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January 29, 1997

**VIA HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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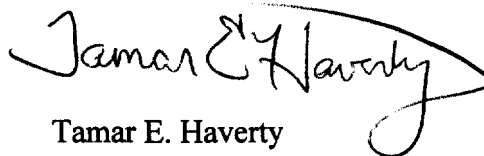
Re: Comments of ACC Long Distance Corp. Submitted in Response to the  
FCC's Notice of Proposed Rulemaking in the Matter of Access Charge Reform,  
CC Docket No. 96-262

Dear Mr. Caton:


Enclosed for filing, please find an original and sixteen (16) copies of the Comments of ACC Long Distance Corp. in the above-referenced docket.

Also enclosed is a diskette copy of this filing. If you have any questions, please do not hesitate to call me at (202) 945-6917.

Sincerely,

  
Tamar E. Haverty

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
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Price Cap Performance Review	)	CC Docket No. 94-1
for Local Exchange Carriers	)	
	)	
Transport Rate Structure	)	CC Docket No. 91-213
and Pricing	)	
	)	
Usage of the Public Switched	)	CC Docket No. 96-263
Network by information Service	)	
and Internet Access Providers	)	

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**COMMENTS OF  
ACC LONG DISTANCE CORP.**

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January 29, 1997

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**COMMENTS OF  
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## SUMMARY OF COMMENTS

- Both the market-based and prescriptive approaches to access charge reform proposed by the Commission rely on the premise that competition will drive access prices closer to costs. Given that competition in the local exchange market is still nascent, the Commission's reliance on competitive forces to reduce access charges to cost is, at this time, misplaced.
- Before implementing the proposed Phase 1 reforms, the Commission should require that *permanent* interconnection rates be established and require a petitioning incumbent to demonstrate first, that competitors are ordering and receiving unbundled network elements and physical collocation in a commercially reasonable manner and second, that competitors are able to combine unbundled network elements to provide end-to-end service.
- The Commission must act now to move access charges closer to cost.
  - ▣ If RBOCs are allowed to provide interLATA long distance services and access charges are maintained at present levels, RBOCs will have an overwhelming cost advantage over their long distance carrier rivals.
  - ▣ The current per-minute recovery of Non-Traffic Sensitive ("NTS") costs via the CCL is an inefficient mechanism for recovering NTS loop costs that encourages inefficient use of telecommunications service and uneconomic bypass of incumbent LEC facilities.
  - ▣ Like the CCL, the per-minute TIC is not cost-based and thus sends inefficient economic signals to incumbents, competitors, and end user customers. The Commission should eliminate the TIC entirely, preferably over a period of no longer than three (3) years.
  - ▣ Inter- and intrastate access services have identical costs and thus ought to have identical prices. In order to prevent intrastate charges from frustrating the pro-competitive intent of the 1996 Act, the Commission should preempt states from assessing intrastate access rates that are substantially higher than interstate rates.
  - ▣ The Commission should not implement time-of-day peak-load pricing of transport facilities because such pricing might distort competition by disadvantaging carriers with traffic mixes that differ from dominant firms. In recognition that common transport facilities are often sized to handle overflow from larger carriers that use dedicated transport, the Commission should implement a transport rate structure that allocates a portion of common transport costs to dedicated transport rates.

- The prices for access and interconnection should be based on the same standard, Total Element Long Run Incremental Cost ("TELRIC"). Access prices must not be based on incumbents' embedded costs.
- The Commission should not begin regulating CLEC terminating access rates. Competitive pressure and the availability of cost-based interconnection and unbundled network elements will force CLECs to provide terminating access at cost-based rates.
- The Commission should carefully consider the total impact its deregulatory proposals would have on the ordering, billing, auditing and tariffing processes for access services.

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**COMMENTS OF  
ACC LONG DISTANCE CORP.**

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ACC Long Distance Corp., by undersigned counsel, hereby submits the following comments in response to the Commission's Notice of Proposed Rulemaking (released December 24, 1996) in the above-captioned proceeding.<sup>1</sup>

**INTRODUCTION AND SUMMARY**

ACC Corp., through its subsidiaries, provides switch-based telecommunications services in the United States, Canada and the United Kingdom. ACC Long Distance Corp. ("ACC"), a

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<sup>1</sup>*In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and Usage of the Public Switched Network by Information Service and Internet Access Providers*, FCC 96-488, CC Docket Nos. 96-262, 94-1, 91-213, and 96-263, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry (rel. Dec. 24, 1996) ("Notice" or "NPRM").

subsidiary of ACC Corp., provides both local and long distance telecommunications services in the United States. ACC was a pioneer in the effort to provide switch-based competitive local exchange service in upstate New York. As an interexchange carrier ("IXC") and a new entrant in local markets, ACC is both a customer that purchases access from, and a competitor that provides access in competition with, incumbent local exchange carriers ("LECs") and therefore ACC will be affected significantly by any rules the Federal Communications Commission ("Commission") adopts to reform access charges.

ACC supports the Commission's goal of moving access charges closer to cost. However, since the pro-competitive goals of the 1996 Act<sup>2</sup> are far from realized, the Commission's reliance on competitive market forces to achieve cost-based access charges is, at this time, misplaced. Even though the Commission has made great strides toward establishing the regulatory framework necessary to implement the 1996 Act, incumbent LECs have challenged the Commission's efforts in the federal appellate courts<sup>3</sup> and competitive entrants are just now completing the first round of negotiations and arbitrations necessary to implement interconnection.<sup>4</sup> Few, if any, competitive entrants have begun actually ordering unbundled network elements and interconnecting with the

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<sup>2</sup>*Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

<sup>3</sup>*See, Iowa Utilities Board v. FCC*, Case No. 96-3321 (8th Circuit) (consolidated appeal of the Commission's First Report and Order on Interconnection); *The People of the State of California v. FCC*, Case No. 96-3519 (8th Circuit) (consolidated appeal of the Commission's Second Report and Order on Interconnection).

<sup>4</sup>Under the timeline for state arbitration of interconnection negotiations established by the 1996 Act in Section 252(b)(4)(C), the first State Commission arbitration decisions were not due until November 8, 1996.

incumbent LECs to provide local exchange service to end user customers in competition with incumbent LECs. Yet at the same time, at least one Regional Bell Operating Company ("RBOC") has already filed for Section 271 authority to provide in-region interLATA service.<sup>5</sup>

Both the market-based and prescriptive approaches to access charge reform proposed by the Commission rely on the fundamental premise that competition will drive access prices closer to costs. Notwithstanding the many years of interconnection negotiations which preceded the 1996 Act, and after nearly one year of interconnection negotiations and arbitrations mandated by the 1996 Act, competition in the local exchange market is still nascent. Therefore, at this time, the Commission's reliance on competitive forces to reduce access charges to cost is misplaced. Unless IXC's have true alternatives to incumbents' access services, incumbent LECs will still hold a monopoly on access and will have no incentive to price access at cost. If the Commission wishes to rely on competitive market forces to drive down the price of access, ACC urges the Commission to combine the prescriptive and market-based approach and reduce access charges now by regulation. Once cost-based interconnection and unbundled network elements are available and/or RBOCs enter their in-region long distance markets, access charges must be reduced. Relaxed regulation of incumbents' access charges is not appropriate until access charges are moved closer to cost and the incumbent LEC shows that actual competition for an access service exists. Such an approach is consistent with the effective, well-settled principle of deregulation.

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<sup>5</sup>*In the Matter of Ameritech Michigan Application for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Michigan, CC Docket No. 97-1, Public Notice Soliciting Comments, DA 97-4 (rel. Jan. 2, 1997).*

**I. AS PROPOSED, THE MARKET-BASED APPROACH MAY RETARD COMPETITION**

The Commission proposes to implement Phase 1 (Potential Competition) reforms when incumbent LECs show that (1) unbundled network elements are priced at forward-looking economic cost; (2) transport and termination of local traffic is at cost-based rates; (3) the LEC is offering services for resale at wholesale prices that reflect avoided costs; (4) competitors can order and receive elements and services in a commercially reasonable manner from the LEC; and (5) dialing parity, number portability and access to rights of way are made available to competitors.<sup>6</sup> When an incumbent LEC meets these Phase 1 triggers, the Commission proposes to (1) eliminate prohibitions against geographic deaveraging of access prices; (2) eliminate bans on volume and term discounts; (3) eliminate prohibitions against contract tariffs; and (4) reduce restraints on the ability of incumbent LECs to offer new services.

Implementing the proposed reforms at the stage of "potential" competition is premature. In assessing the extent of competition in the access market, the Commission must be careful to distinguish between generic "local exchange competition," which includes resale competition for local exchange services, and access competition, which requires substantially more (*i.e.* competitive services provided over a competitive LEC's own facilities or by combining unbundled network elements) than mere resale competition in the local exchange market. If new entrants only provide local exchange service by reselling the incumbent's dial tone, the incumbent will continue to collect

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<sup>6</sup>ACC notes that noticeably absent from this list of competitive triggers is any requirement that physical collocation be made available at cost-based rates.

the switched access charges on long distance calls terminated to and originating from the new entrants' customers. Until competitive LECs ("CLECs") are effectively able to purchase and combine network elements and provide competitive local exchange service in competition with the incumbent utilizing these network elements, the incumbent will continue to enjoy a virtual monopoly in the switched access service market. Although the Commission has found that new entrants should be allowed to provide local exchange service solely by recombining unbundled network elements,<sup>7</sup> RBOCs are still vigorously opposing this practice (which some refer to as "sham unbundling") and attempting to force new entrants to purchase a retail service at wholesale rates instead of purchasing and combining unbundled network elements.<sup>8</sup> Thus, the Commission should reinforce the finding it made in its Interconnection Order by requiring, as a Phase 1 competitive trigger, incumbent LECs to show that competitors are in fact able to purchase and combine unbundled network elements to provide end-to-end service.

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<sup>7</sup>*In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, ¶¶ 328-339, 1382 (1996) ("Interconnection Order").

<sup>8</sup>*See, e.g.*, Southwestern Bell Telephone Company, Complaint for Declaratory and Injunctive Relief, Count II(A), ¶¶ 111-115 (filed in the U.S. District Court, Western District of Texas, Austin Division on Jan. 21, 1997) (claiming that by allowing new entrants to purchase all network elements necessary to provide completed telephone service on an unbundled basis and "rebundle" them to provide completed local telephone service, the Public Utilities Commission and Commissioners have permitted the new entrants to evade switched access charges and "bypass" the pricing standards and other restrictions in the Act governing the purchase of retail services for resale).

Moreover, although the Notice places great emphasis on competitors entering the market via the purchase and combination of unbundled network elements,<sup>9</sup> it does not address the implementation of physical collocation arrangements which are essential to the provision of telecommunications services utilizing unbundled network elements. Even after years of interconnection negotiations preceding the 1996 Act, and after nearly one year of negotiations and arbitrations mandated by the Act, many new entrants are not yet physically collocated at the incumbent LECs' premises. For example, after months of arduous negotiations (and the filing of a formal complaint at the New York Public Service Commission), ACC and NYNEX finally reached an agreement that will allow ACC to physically collocate at a NYNEX office in Syracuse, New York, at a *reduced* cost of \$50,000 per collocation.<sup>10</sup> In ACC's experience, physical collocation is required (by the LEC, if not technically) in order for competitive entrants to purchase unbundled local loops from the incumbent provider. Therefore, the extraordinary cost of physical collocation is one of the most significant impediments to utilizing unbundled network elements to provide local exchange service. Because physical collocation is effectively and efficiently necessary to the

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<sup>9</sup>See, Notice at ¶¶ 170-73.

<sup>10</sup>Prices for physical collocation vary greatly from incumbent to incumbent and include numerous recurring and non-recurring charges (such as quote preparation fees, cross-connects, entrance facilities, and cage enclosures). For example, the Colorado Public Service Commission has adopted an interim interconnection tariff in Docket 96S-233T which includes cage enclosure rates (without redundant heating, ventilation and air conditioning) varying from \$21,054 for up to 100 square feet to \$50,055 for 301 to 400 square feet. Pacific Bell's California expanded interconnection service tariff (C.P.U.C. No. 175-T) includes charges for the establishment of collocation infrastructure that vary from \$24,950 to \$72,139 (charge varies based on central office where collocation is established).

utilization of unbundled network elements, the time and expense necessary to establish physical collocation must be taken into account in any assessment of whether unbundled network elements provide a competitive alternative to the incumbent's access services.<sup>11</sup>

ACC believes that its experience is not out of the ordinary and that across the United States, many CLECs are just now beginning the process of *ordering* physical collocation with the incumbent (at extraordinary and non-cost-based prices). In addition, even after ACC and other new entrants establish physical collocation, the prices the CLECs must pay the incumbents to purchase unbundled network elements are interim, and often subject to true-up, until the State Public Utility Commission considers the incumbent's cost studies and adopts permanent interconnection rates.<sup>12</sup>

Without the presence of actual competition in the access market, it is difficult to understand what competitive forces will provide incumbents with the incentive to reduce their access charges. Taking the proposed Phase 1 deregulatory actions before CLECs actually provide access services in competition with the incumbent will stifle competition by allowing incumbents to target customers and market segments most likely to migrate to competitive providers. For example,

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<sup>11</sup>ACC notes that under the Commission's Interconnection Order, the same Total Element Long Run Incremental Cost ("TELRIC") pricing standard adopted for interconnection and access to unbundled network elements applies to physical collocation. Interconnection Order at ¶ 629.

<sup>12</sup>Several State Public Utilities Commissions have severed costing and pricing issues from interconnection arbitrations and established separate proceedings to develop permanent interconnection rates (*See, e.g.*, Arizona (Dockets U-3021-96-448, U-3245-96-448, E-1051-96-448), Colorado (Docket 96S-331T), Georgia (Docket 7061), Kansas (Docket 97-SCCC-149-GIT), Maryland (Docket 8731, Phase II), Michigan (Dockets U-11280, U-11281), New York (Dockets 95-C-0657, 94-C-0095, 91-C-1174), Pennsylvania (Dockets A-310203F0002 *et al.*, Phase III) and Washington (Docket UT-960369)).

allowing incumbents to provide volume and term discounts on access will enable them to target medium and large businesses, which are traditionally the first customers a competitive provider targets.<sup>13</sup> If incumbents are able to offer volume and term discounts on access to these customers before the new entrants have established an actual presence in the access market, the incumbents will be able to offer predatorily low discounts (often under term conditions which tie up the customer for years), thereby precluding or significantly hindering competitors from entering the market.<sup>14</sup>

*Importantly, the threat of competition does not justify relaxed regulation of monopoly providers.* The mere existence of “potential competition,” as evidenced by interim prices for interconnection, a State Commission-approved interconnection agreement, and the availability of retail service at wholesale rates, is not sufficient to justify the regulatory relief proposed by the Commission for Phase 1. Before implementing the proposed Phase 1 reforms, the Commission should require that *permanent* interconnection rates be established and require a petitioning incumbent to demonstrate first, that competitors are in fact ordering and receiving unbundled

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<sup>13</sup>The volume of telephone traffic generated by medium and large businesses, as opposed to residential customers, allows the new entrant to recover more of its start-up costs.

<sup>14</sup>For example, one day before ACC activated service in upstate New York, NYNEX filed a tariff with the New York Public Service Commission proposing a local usage discount plan. *See*, Letter from Patrick Lee, General Attorney, New York Telephone, to John Kelliher, Secretary, Public Service Commission (Sept. 30, 1994). Under the terms of this plan, usage discounts provided to end users reduced retail charges below the price quoted to alternative local exchange carriers for wholesale access usage (up to 50% less than the price of wholesale terminating local access by year five). *See*, Letter from Maureen Swift, Director of Regulatory Affairs, ACC National Telecom, to John Kelliher, Secretary, Public Service Commission (Nov. 10, 1994). Furthermore, by requiring all statewide usage to be included in the plan, NYNEX effectively prevented any alternative carrier operating on less than a statewide basis from competing for a multiple-location customer. *Id.*

network elements and physical collocation in a commercially reasonable manner and second, that competitors are able to combine unbundled network elements to provide end-to-end service.

**II. ACCESS CHARGES MUST BE MOVED CLOSER TO COST IMMEDIATELY**

**A. If RBOCs Are Given Section 271 Authority to Provide In-Region Long Distance, the Commission Should Use the Prescriptive Approach and Quickly Reduce Access Charges to Costs**

If the RBOCs are allowed to provide in-region interLATA services and access charges are maintained at present levels, the RBOCs will have an overwhelming cost advantage over their long distance carrier rivals. Whereas IXCs will be forced to pay access charges that are inflated above cost, and price their long distance services to recover the costs of purchasing access, an RBOC long distance subsidiary will essentially be paying inflated access charges to itself. So long as the RBOC long distance subsidiary is not directly accountable to shareholders, it may price its long distance services below cost, even operate at a loss, and still guarantee the RBOC local exchange subsidiary a windfall in the form of access charges that are inflated above costs.

At least one RBOC (Ameritech) has already filed for the authority to provide in-region long distance, and other RBOCs are expected to follow shortly. If the Commission anticipates that the RBOCs will be authorized to provide in-region interLATA services in the near future, it should move quickly to reduce access charges closer to costs prior to authorizing such entry. While the market-based approach is well meaning, it alone will not move access charges to costs if the RBOCs are allowed to provide in-region interLATA long distance service before actual competition for access exists.

**B. The Carrier Common Line Charge Should Be Reduced Immediately**

The Commission should reduce carrier common line ("CCL") charges, or, at a minimum, eliminate per-minute CCL charges. As the Federal-State Joint Board on Universal Service recognized, the current per-minute recovery of Non-Traffic Sensitive ("NTS") costs is an inefficient mechanism for recovering NTS loop costs.<sup>15</sup>

[t]he cost of the loop is largely a fixed cost, i.e., it does not vary with usage. To provide proper economic signals, it would be preferable for prices related to the loop, such as the CCL charge, to be set in a manner that is consistent with the manner in which the loop's cost is incurred.<sup>16</sup>

As the Commission recognizes, rate structure rules that do not send accurate pricing signals to customers have the potential to encourage inefficient use of telecommunications services and uneconomic bypass of incumbent LEC facilities.<sup>17</sup> In addition, per-minute CCL charges allow an incumbent's CCL revenues to grow in proportion to the growth in toll traffic, not in proportion to the NTS costs incurred.<sup>18</sup> Commission industry analyses show that while interstate switched access minutes have grown dramatically since 1985, the growth rate in LEC access lines has been much

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<sup>15</sup>The per-minute CCL charge also results in higher-volume toll users paying rates that exceed cost, thus subsidizing lower-volume toll users.

<sup>16</sup>*In the Matter of Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket 96-45, ¶ 775 (rel. Nov. 8, 1996) ("Recommended Decision").

<sup>17</sup>Notice at ¶ 55.

<sup>18</sup>Even incumbents agree that NTS costs do not vary with usage. *See, In the Matter of US West Communications, Inc. Petition for Waiver of Part 69 of the Commission's Rules*, CCB/CPD Docket No. 96-21, US West Petition for Waiver at 4 (filed July 24, 1996).

slower.<sup>19</sup> Since the CCL charge is based on originating and terminating switched access minutes of use, the per-minute CCL revenues of incumbent LECs have increased much faster than the costs which the CCL was intended to recover, producing a windfall for incumbents that is generated by market growth in the long distance industry.

In its Interconnection Order, the Commission noted that the CCL charge and Transport Interconnection Charge ("TIC") are non-cost-based components included in the current access charge system. If the Commission determines that a portion of the NTS costs must continue to be recovered from interstate interexchange carriers (as opposed to the cost-causing end user customer), the Commission should establish a per-line charge for NTS costs. Furthermore, for the reasons set forth in Section III, *infra*, the per line charge should not be set to recover incumbent LECs' embedded NTS costs.

**C. The Commission Should Phase Out Transport Interconnection Charges**

The TIC is a per-minute charge imposed on all switched access customers regardless of whether they use the incumbent LEC's transport facilities. Like the CCL, the per-minute TIC is not cost-based and thus sends inefficient economic signals to incumbents, competitors, and end user

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<sup>19</sup>Although interstate switched access minutes have increased by 140% from 1985 (167.2 billion minutes) to 1994 (401.3 billion minutes), BOC access lines have increased by only 29% during the same period (87,777,000 access lines in 1985 to 113,092,000 access lines in 1994). *Trends in Telephone Service*, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission (May 1996) (percentages derived using figures from Tables 14 and 23).

customers.<sup>20</sup> The lack of a nexus between the TIC and actual use of the incumbent LEC's transport facilities provides an even greater market distortion. As the Commission notes, the TIC was initially designed as a *transitional* measure that made the transport rate restructure *revenue neutral* for incumbent LECs.<sup>21</sup> The TIC is a make-whole additive paid to incumbents irrespective of whether they provide transport. This make-whole mechanism allows incumbent LECs to price transport below cost but still receive revenues to recover the shortfall created by below-cost pricing. Competitive providers, on the other hand, do not have the opportunity to charge a TIC to recover their costs but they must still match the incumbents' below-cost transport pricing in order to provide customers with competitive transport rates. In addition, if the competitor is interconnected at the LEC's end office, the *competitor must pay the TIC to the LEC* regardless of whether the competitor uses the LEC's transport. The current TIC rate structure therefore *discourages* investment in transport facilities that are more economically efficient than the incumbent's and places competitive providers at a *competitive disadvantage*.

Taken together, the inefficient economic incentives and competitive disadvantages of the TIC make it incompatible with the pro-competitive goals of the 1996 Act. ACC urges the Commission to comply with the Court's directive in *CompTel v. FCC* and eliminate the TIC over a well-defined period of no more than three (3) years.

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<sup>20</sup>The D.C. Circuit has ordered the Commission to either eliminate the TIC or provide a reasoned explanation for retention of this non-cost-based element. *CompTel v. FCC*, 87 F.3d 522, 536 (D.C. Cir. 1996).

<sup>21</sup>Notice at ¶ 96.

**D. Inter- and Intrastate Access Services Have Identical Costs and Should Be Priced Accordingly**

Inter- and intrastate access services have identical costs and thus ought to have identical prices. Large price disparities between interstate switched access and intrastate switched access encourages regulatory gaming by incumbents and tariff shopping by switched access customers. Percentage interstate usage ("PIU") disputes are largely rooted in the incentives created by the difference in inter- and intrastate access charges. When intrastate access prices are higher than interstate access prices, IXCs have incentives to report higher PIUs (thus reducing their access payments to incumbents), while incumbents have incentives to audit PIU reports and reclassify as much traffic in the intrastate category as possible (thus increasing their access revenues). Calculating, auditing and defending audits of PIU reports is grossly expensive and time consuming. PIU disputes could be largely eliminated by comparable inter- and intrastate access rates.

Requiring interstate access charges to move closer to cost but allowing intrastate access charges to remain inflated at prices above cost will undermine any access charge reform undertaken by the Commission. To prevent intrastate charges from frustrating the pro-competitive intent of the 1996 Act, the Commission should preempt states from assessing intrastate access rates that are substantially higher than interstate rates.<sup>22</sup>

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<sup>22</sup>For example, laws and regulations in the States of Texas and Kansas, respectively, may defeat the pro-competitive intent of the 1996 Act by requiring the incumbent to be made whole through state subsidies or rate adjustments that recover lost revenues. *See*, Section 3.608(b) of the Texas Public Utility Regulatory Act of 1995 (requires the Texas Commission to implement a recovery mechanism for any "reasonably projected reduction in revenues" caused by a change in Federal universal service fund revenues or any change in revenues assigned to the intrastate

**E. Tandem-Switched Transport Rates Should Be Reformed**

The Commission should not implement time-of-day peak-load pricing of transport facilities because such pricing might distort competition by disadvantaging carriers with traffic mixes that differ from dominant firms. For example, if the peak period is defined as regular business hours (or some subset of that time period), a carrier with predominantly business traffic would pay more than a carrier with predominantly residential traffic that peaks in the evening. Furthermore, as the Commission has previously found, there are many potential difficulties in determining a peak period.<sup>23</sup> These difficulties are compounded, not lessened, by the presence of multiple competitors in the access market.

The Commission notes that some portion of tandem costs may be attributable to the need to accommodate the overflow traffic from direct-trunked transport facilities.<sup>24</sup> For instance, larger IXC's such as AT&T, MCI, and Sprint are more likely to utilize direct-trunked transport facilities because their traffic volume justifies dedicated facilities. Smaller IXC's, however, do not normally have the volume necessary to justify dedicated facilities and thus must purchase common transport. ACC agrees that the size of the switch and common transport facilities should be engineered to

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jurisdiction) and the Kansas Corporation Commission's Order *In the Matter of a General Investigation Into Competition Within the Telecommunications Industry in the State of Kansas*, Docket No. 190, 492-U, 94-GIMT-478-GIT (Dec. 27, 1996) (sets the initial amount of the Kansas universal service fund at the amount of LEC revenues lost from the rate rebalancing, ordered in April 1996, which requires LECs to reduce their intrastate access charges to interstate levels).

<sup>23</sup>Notice at ¶ 78 and n. 141.

<sup>24</sup>Notice at ¶ 90.

handle overflow from dedicated transport. However, since dedicated transport customers only pay common transport for their overflow traffic, they don't pay the full costs of sizing the common transport facilities. Common transport customers end up shouldering the majority of the costs of the larger switch and transport facilities, effectively subsidizing the direct transport customers' use of common transport. In order to correct this imbalance, the Commission should implement a transport rate structure that allocates a portion of common transport costs to dedicated transport rates.

### **III. ACCESS CHARGES SHOULD BE BASED ON TELRIC, NOT INCUMBENTS' EMBEDDED COSTS**

Access services are similar to interconnection rate elements. Both services allow for the interconnection between different companies' networks and the same type of equipment used to interconnect long distance companies to local telephone companies can also be used to interconnect two local telephone companies.<sup>25</sup> Thus the prices for access and interconnection should be based on the same standard, Total Element Long Run Incremental Cost ("TELRIC"). As the Commission noted,

[a]dopting a pricing methodology based on forward-looking, economic costs best replicates, to the extent possible, the conditions of a competitive market. In addition, a forward-looking cost methodology reduces the ability of an incumbent LEC to engage in anti-competitive behavior.<sup>26</sup>

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<sup>25</sup> Access and interconnection can be distinguished, however, on the basis of payment flows. Access is a one-way charge paid by interconnected long distance carriers to local telephone companies. Interconnection charges, on the other hand, are paid by both interconnected local telephone companies.

<sup>26</sup> Interconnection Order at ¶ 679.

Any disparity between interconnection and access prices will create incentives for competitors to choose the service that is priced closer to cost. Access prices that are substantially above cost will provide incentives for IXC's to bypass the incumbent's access charges by interconnecting with the incumbent and purchasing unbundled network elements to substitute for the access service. The Commission recognized this possibility in its Interconnection Order and required, for an interim period, carriers that purchase local switching on an unbundled basis for the purpose of originating and terminating interstate traffic to pay the CCL and 75% of the TIC.<sup>27</sup> In order to address this problem permanently, the Commission must adopt cost-based rates for access charges.

Nor should the prices for access be based on the embedded costs of the incumbents. Using an embedded cost methodology to determine access prices would also create disparities between access and interconnection pricing signals. Furthermore, as the record in the Commission's Interconnection proceeding shows, an "embedded cost" methodology is pro-competitor (incumbent LEC) not pro-competition.<sup>28</sup> In a competitive market, no firm is guaranteed recovery of its embedded costs. Guaranteeing recovery of embedded costs creates investment incentives that are incompatible with a competitive market. Telephone companies will not be incented to invest in least-cost, forward-looking technologies if they are guaranteed to recover the costs of their investments in old, outdated technology. If the Commission wishes to introduce competition in the

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<sup>27</sup>Interconnection Order at ¶¶ 721-28.

<sup>28</sup>Interconnection Order at ¶ 705.

access market and reduce access charges to cost, it should not guarantee incumbents recovery of their embedded access costs.

#### **IV. THE COMMISSION SHOULD NOT REGULATE CLEC TERMINATING ACCESS**

CLEC terminating access charges should not be subject to regulatory oversight. In the long-term, economic incentives will force CLECs to price both originating and terminating access at or below their incumbent LEC competitors. For example, if CLECs price terminating access above cost, but interconnection and unbundled network elements are priced at cost, in the long run it will be more economical for the long distance carrier to set up its own CLEC and pay cost-based interconnection rates rather than inflated access rates. Because the market will eventually yield cost-based terminating access rates, the Commission should not impose new regulatory requirements on CLECs, which are presumptively classified as non-dominant providers and thus are not currently subject to the Commission's access charge rules.<sup>29</sup>

#### **V. THE COMMISSION SHOULD CONSIDER THE IMPACT THE PROPOSED REFORMS COULD HAVE ON LECs' ACCESS CHARGE BILLS TO IXCs**

In its Notice, the Commission states that it seeks "to adopt rules and policies that will facilitate a smooth transition from the current system to one that can be sustained in competitive local markets"<sup>30</sup> and that regardless of the specific approach it adopts (market-based, prescriptive, or some combination of the two), once "substantial competition" is present for a particular service

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<sup>29</sup>See, e.g. *Tariff Filing Requirements for Nondominant Common Carriers*, CC Docket No. 93-36, Mem. Opinion and Order, 8 FCC Rcd 6752, 6754; Order, 10 FCC Rcd 13653 (1995).

<sup>30</sup>Notice at ¶ 49.

in a particular area, the Commission proposes to remove a service from price cap and tariff regulation for that area.<sup>31</sup> ACC is concerned that adopting some or all of the various reforms proposed in the Notice could result in very complex and burdensome access charge ordering, billing and auditing processes.

Currently, the uniformity of access service ordering and billing forms enables carriers to use standard billing, ordering and auditing procedures. If, however, the Commission were to implement peak load pricing, deregulate specific access services in specific geographic areas, adopt geographic deaveraging of some access services, and eliminate or combine baskets in specific geographic areas, both incumbent LECs and IXC's would be faced with totally different ordering and billing structures that will vary even within one incumbent's service territory. The myriad of proposals set forth in the Notice could potentially result in increasingly complex tariff filings by incumbent LECs and more complicated ordering and billing procedures for access services. As the Commission amends its access charge rules, ACC urges it to consider the total impact its deregulatory proposals would have on the ordering, billing, auditing and tariffing processes for access services. In order to facilitate a smooth transition from the current access charge regime to a competitive market, the Commission should adopt deregulatory measures that are simple to administer and implement.

#### **CONCLUSION**

As the Commission considers changes to its current access rules, it should bear in mind the competitive trilogy of interconnection, universal service, and access charges. In order to reduce

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<sup>31</sup>Notice at ¶ 149.

uneconomic bypass of the incumbents' access facilities, the Commission must reduce access charges to cost. Reducing access charges to cost-based rates is especially imperative when RBOCs begin providing in-region long distance service. Allowing access charges to remain at inflated, above-cost rates will provide RBOCs with a competitive advantage in the long distance market. If the Commission believes that any RBOC will soon be authorized to provide in-region long distance, it should reduce access charges to cost immediately.

Even if the RBOCs do not provide in-region long distance service in the near future, the Commission must not relax regulation of incumbents' access charges before actual competition in the access market exists. The mere threat of competition in the local exchange market does not equal actual competitive pressures in the access market. The Commission should therefore strengthen its proposed Phase 1 triggers and require an incumbent LEC to show that permanent cost-based interconnection prices have been set, competitors are able to order and receive unbundled network elements and physical collocation in a commercially reasonable manner, and competitors are able to combine unbundled network elements to provide end-to-end service to customers.

Respectfully submitted,



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